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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/646,979	08/22/2003	Ann Louise McCormack	KCX-1125 (19615)	1058

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EXAMINER

MATZEK, MATTHEW D

ART UNIT	PAPER NUMBER
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1794

MAIL DATE	DELIVERY MODE
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07/14/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Advisory Action Before the Filing of an Appeal Brief	Application No. 10/646,979	Applicant(s) MCCORMACK ET AL.	
	Examiner MATTHEW D. MATZEK	Art Unit 1794	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 25 June 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
 b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
- (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
 (b) ☐ They raise the issue of new matter (see NOTE below);
 (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
 5. ☐ Applicant's reply has overcome the following rejection(s): _____.
 6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
 7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
 The status of the claim(s) is (or will be) as follows:
 Claim(s) allowed: _____.
 Claim(s) objected to: _____.
 Claim(s) rejected: 1-27.
 Claim(s) withdrawn from consideration: 28-30.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
 9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
 10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
 12. ☐ Note the attached Information *Disclosure Statement(s)*. (PTO/SB/08) Paper No(s). _____.
 13. ☐ Other: _____.

/MM/

/Norca L. Torres-Velazquez/
 Primary Examiner, Art Unit 1794

Continuation of 11. does NOT place the application in condition for allowance because: Applicant argues that Heyn et al. cannot duplicate the structure of Applicant's film wherein each of the discrete regions of the carrier resin phase is completely intermixed with and surrounded by the letdown phase. Examiner has relied upon Norquist for the teaching of the complete intermixing of the two phases and the surrounding of the one phase with the other. Applicant argues that a substantial portion of the filler contacts the letdown phase in a film extruded according to Heyn et al. and thus substantially all of the filler is not separated from contact with the letdown phase. Examiner has relied upon Heyn et al. to teach filler in the carrier phase and Norquist to teach the separation of the phases. Applicant argues that Norquist fails to provide for a carrier resin phase that is completely intermixed and surrounded by the letdown resin phase. Examiner has relied upon Norquist in the section acknowledged by Applicant (col. 13, lines 40-59) to teach one phase is completely surrounded by a second phase and is in fact "encapsulated" by the second phase. Examiner's interpretation of the term "encapsulated" is to mean that the first phase is completely intermixed with and surrounded by the second phase. Applicant argues that embedded phases must be continuous strands that run down the entire length of the web, for if the phases were to terminate at any point in the longitudinal direction then there would not be any discrete phase to resist transverse tearing at that location and resistance to transverse tearing is the intended purpose of the discrete phase. Examiner takes the position that the discrete phases do provide resistance to transverse tearing and the reference teaches that the discrete phase is encapsulated and as such meets that limitation of being completely surrounded by the continuous phase. Applicant argues that Norquist fails to provide for filler or its segregation from the letdown resin. Examiner has relied upon Heyn et al. to teach the segregation of the carrier phase resin and filler from the letdown resin. Examiner has relied upon Norquist to teach the intermixing of the resin phases and the surrounding of the carrier resin with the letdown resin. Applicant argues that the teaching of Haffner does not adequately provide for the claimed wvtr. Examiner takes that position that the article of Heyn et al. utilizes filler to form a breathable article and that Haffner et al. provide for a wvtr in excess of 1500g/m²/day. As such, the value provided for in Haffner et al. is merely the minimum value allowable to successfully create the invention and would provide for the claimed values. Applicant argues that Bansal fails to provide for LLDPE as a core component in a spunbond fiber formed in a sheath-core configuration. Examiner has relied upon Bansal to teach the use of LLDPE with a melt index of at least about 20g/10min. The motivation to use such a polymer is provided for in [0026] and states that the use of LLDPE with a melt index of at least about 20g/min and Examiner was demonstrating the desirability of using LLDPE with a higher melt index than that of Heyn et al.